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**ABOUT LEGAL RESPONSIBILITY FOR VIOLATION OF COPYRIGHTS
AND RELATED RIGHTS, INVENTOR'S AND PATENT RIGHTS: ISSUES OF
ALLOCATION OF RESPONSIBILITY**

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Argues that allocation of civil and criminal responsibility is carried out in accordance with the object of encroachment and in accordance with the objective aspect of a wrongful act, and in cases of related compositions of relevant administrative offenses and crimes in accordance with the size of inflicted harm.

The differences in the jurisdiction of crimes and administrative offences in the field of legislation on copyright and related rights, inventor's and patent rights are noted in the article.

The author focuses attention on legal uncertainty in the priority of jurisdiction between district court and garrison military court, and also on the uncertainty of priority of jurisdiction between district court and arbitration court in a case of administrative investigation in respect of administrative offense under article 14.33 of the Code on Administrative Offences of the Russian Federation.

Keywords: copyright and related rights, inventor's and patent rights, copyright infringement, responsibility for copyright infringement, intellectual property courts.

In accordance with the Russian legislation, violation of copyright and related rights, inventor's and patent rights entails occurrence of one of three types of legal responsibility:

- administrative one (under the Code on Administrative Offences of the RF (hereinafter – CAO RF) [2]: article 7.12 – for breach of copyright and related rights, inventor's and patent rights; article 14.33 – for unfair competition);
- civil-law one (under the Civil Code of the RF [1]: article 1253 – responsibility of legal persons and individual entrepreneurs for violations of exceptional rights; article 1301 – responsibility for the infringement of an exclusive copyright; article 1311– responsibility for the infringement of an exclusive right on the object of related rights; article 1472 – responsibility for the infringement of an exclusive right to manufacturing secret; article 1515 – responsibility for the unlawful use of a trademark; article 1537– responsibility for the unlawful use of the appellation of origin);
- criminal one (under the Criminal Code of the Russian Federation [3]: article 146 – for breach of copyright and related rights).

Consideration of cases on relevant administrative offences, civil-law torts and crimes in respect of jurisdiction is a prerogative right of courts of general jurisdiction and arbitration courts.

The ratio between these types of legal responsibility has not undergone fundamental changes after establishment in the system of arbitration courts of intellectual property court, which is a specialized arbitration court that considers within its competence as a court of first and cassation instance cases on disputes relating to the protection of intellectual property rights, and removes a significant part of the issues associated with the determination of jurisdiction and arbitrability of cases of the named category.

Part 1 article 43.3 of the Federal Constitutional Law No. 4-FCL from December 06, 2011 “On Amendments to the Federal Constitutional Law “On the Judicial System of the Russian Federation” and the Federal Constitutional Law “On Arbitration Courts in the Russian Federation” in Connection with the Creation of an Intellectual Property Court in the System of Arbitration Courts” [4] determines, that the intellectual property court as a court of first instance deals with:

1) cases on contesting normative legal acts of federal executive bodies affecting the rights and legitimate interests of an applicant in the field of legal protection of intellectual property and means of individualization , including in the field of patent rights and rights to selection achievements, the right to integrated circuit layout, right to manufacturing secrets (know-how), right to the means of

identification of legal persons, goods, works, services and enterprises, the right to use the results of intellectual activity in a single technology;

2) cases on disputes about granting or termination of legal protection of intellectual property and equivalent to it means of individualization of legal entities, goods, work, services and enterprises (with the exception of objects of copyright and related rights, integrated circuit layouts), including:

- on disputing non-normative legal acts, decisions and actions (inaction) of a federal body of executive power for issues of intellectual property, a federal body of executive power for selection achievements and their officials, as well as of the bodies authorized by the Government of the Russian Federation to consider applications for the grant of a patent for secret inventions;

- on disputing the decisions of the Federal Antimonopoly body on recognition as unfair competition of actions associated with the acquisition of an exclusive right to means of individualization of a legal person, goods, services and enterprises;

- on determination of a patent holder;

- on invalidation of a patent for an invention, utility model, production prototype or selection achievement, a decision to provide legal protection to a trademark, appellation of origin and to grant exclusive rights to such name, if federal law does not provide another procedure for their invalidation;

- on early termination of legal protection of a trade mark because of its non-use.

At the same time it is established that these cases are dealt with by the intellectual property court regardless of whether the participants of legal relations, of which the dispute has arose, are organizations, individual entrepreneurs or citizens (part 2 article 43.3 of the Federal Constitutional Law No. 4-FCL from December 06, 2011).

Delimitation of subjective composition of violations of copyright and related rights, inventor's and patent rights well stay within the usual scheme for major types of legal responsibility.

When a crime under article 146 of the Criminal Code of the RF, namely in the case of conversion of authorship (plagiarism), if this deed has caused major damage to the author or other right holder (part 1) or in the case of illegal use of an object of copyright or related rights, as well as the acquisition, storage, transportation of counterfeit copies of works or phonograms for purposes of sale, committed on a large scale, the subject of criminal responsibility is a general subject - a sane natural person who at the time of offense has reached sixteen years of age. Deeds provided for in the said article shall be deemed committed on a large

scale if the cost of copies, works or phonograms or the cost of the rights to the use of objects of copyright and related rights exceeds fifty thousand rubles. General subject is also provided for in the case where the deeds provided for in part 2 article 146 of the Criminal Code of the RF are committed: by a group of persons in a preliminary collusion, by an organized group or on a large scale (clause "b" and "c" part 3 article 146 of the Criminal Code of the RF. Deeds that are provided for in this article shall be deemed committed on an especially large scale, if the amount of damage exceeds two hundred fifty thousand rubles). And only in case of an offense under part 2 article 146 of the Criminal Code of the RF committed by a person using its official position, the subject of a crime is a special subject, while the law does not stipulate that it must necessarily be an official.

At that, it should be borne in mind that the prosecution of a person, who has committed a crime under part 1 article 146 of the Criminal Code of the RF, shall be implemented in private-public order that provides for the institution of criminal proceedings only upon application of a victim or its legal representative and must not be terminated in connection with the reconciliation between the victim and the accused, except for cases provided for in article 25 of the Code of Criminal Procedure of the RF (part 3 article 20 of the Code of Criminal Procedure of the RF). In accordance with article 25 of the Code of Criminal Procedure of the RF, a court, as well as an investigator with the consent of the head of an investigative body or an interrogator with the consent of prosecutor is entitled on the basis of application of the victim or its legal representative to terminate a criminal case against a person suspected or accused of committing a crime of minor or moderate gravity, in cases provided for by article 76 of the Criminal Code of the RF, if this person has reconciled with the victim and made up inflicted losses. Based on the fact that crimes provided for in parts 1 and 2 article 146 of the Criminal Code of the RF, in accordance with part 2 article 15 of the Criminal Code, refer to minor offenses, a person who for the first time has committed a crime of small or moderate gravity, can be exempted from criminal responsibility if it has reconciled with the victim and made up inflicted losses (article 76 of the Criminal Code of the RF).

The subjects of administrative responsibility in the field of legislation on copyright and related rights, inventor's and patent rights, and rightly so, can serve three categories of actors: citizens, officials and legal entities. For the mentioned subjects this type of responsibility occurs if there is a fact of:

- import, sale, hiring out or any other unlawful use of copies of works or phonograms for the purpose of deriving income, where the copies of

works or phonograms are counterfeited under the legislation of the Russian Federation on copyright and related rights, or where the information about the manufacturers of the copies of works or phonograms, or about the places of their production, as well as about the possessors of the copyright and similar rights, indicated on these copies, is false, as well as any other violation of copyright and related rights for the purpose of deriving income, except for cases provided for in part 2 article 14.33 of the Code on Administrative Offences of the RF (part 1 article 7.12 CAO RF);

- unlawful use of an invention, utility model, production prototype, except for cases provided for in part 2 article 14.33 of the Code on Administrative Offences of the RF, or disclosure of the essence of an invention, utility model, production prototype without the author's or applicant's consent prior to the official publication of information about them, conferment of authorship and coercion to co-authorship (part 2 article 7.12 CAO RF);

With regard to article 14.33 of the Code on Administrative Offences of the RF, which provides for administrative responsibility for unfair competition, if these actions do not contain a criminal deed (part 1 article 14.33 CAO RF) or in case of unfair competition that is expressed in the introduction into circulation of goods with the illicit use of the results of intellectual activity and equivalent to them means of individualization of a legal person, means of individualization of products, works, services (part 2 article 14.33 CAO RF), the subjects of responsibility may be solely officials and legal persons.

CAO RF also provides for the possibility of a judge to take a decision to release a person from administrative responsibility when the administrative offense is insignificant and to declare to it an oral reprimand (article 2.9). However, CAO RF contains no explanation of what is meant by the notion of "insignificance of an administrative offence" and conditions of application the provisions of article 2.9. CAO RF.

Analysis of articles 7.12, 14.33 CAO RF and article 146 of the Criminal Code of the RF, cases upon which are referred to the jurisdiction of courts, allows to judge that the legislator has exercised the delimitation between administrative and criminal responsibility, primarily, according to the object of encroachment and according to the objective side of a wrongful deed, and in cases of related compositions of relevant administrative offenses and crimes according to the amount of harm inflicted.

There are also differences in jurisdiction of crimes and administrative offences in the field of legislation on copyright and related rights, inventor's and patent

rights. In accordance with parts 1 and 2 article 31 of the Code of Criminal Procedure of the RF, crimes under article 146 of the Criminal Code of the RF are subject to the jurisdiction of district courts. With regard to the jurisdiction of cases on administrative offences provided for by articles 7.12 and 14.33 CAO RF, in practice may occur uncertain situations in respect of the issue of what judge has to consider this or that case.

By a general rule cases on administrative offenses provided for by article 7.12 CAO RF are under the jurisdiction of justice's courts, and cases on administrative offenses provided for by article 14.33 CAO RF – arbitration courts (part 3 article 23.1 CAO RF). At the same time it is established that in cases of administrative offenses by servicemen and citizens called up for military training, such cases shall be considered by the judges of garrison military courts. Besides, the carrying out of proceedings on administrative offences in the form of an administrative investigation, the possibility of which, in accordance with part 1 article 28.7 CAO RF, is stipulated in case of detection of an administrative offence in the field of patent legislation, legislation on copyright and related rights, also provides for changes in the jurisdiction of a case, namely its assignment to the jurisdiction of district courts.

When it is evident, that in the implementation of the proceedings on a case of administrative offense under article 7.12 CAO RF in the form of an administrative investigation, it shall be considered in accordance with jurisdiction not by a justice of the peace, but by a district court judge, the situation is not as evident when the subject of such administrative offense is a military serviceman or a person called up for military training. In this case, there is uncertainty as to the priority of jurisdiction between a district court and garrison military court. The same uncertainty about the priority of jurisdiction between a district court and arbitration court occurs in the case of an administrative investigation of an administrative offence provided for by article 14.33 CAO RF.

To exclude situations of uncertainty regarding the priority of jurisdiction between district courts, arbitration courts and garrison military courts in respect of cases of administrative offenses in general and in cases of administrative offenses provided for, in particular, by articles 7.12 and 14.33 CAO RF, we need introducing of appropriate amendments to article 23.1 CAO RF, and before their introducing – the explanations of the Plenary Session of the Supreme Court of the Russian Federation.

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